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July 12, 2006

By Email and U.S. Mail

Clerk
Cable Television Division
Massachusetts Department of Telecommunication and Energy
One South Station, 4 East
Boston, MA 02110

RE: Comments of Shrewsbury Electric and Cable Operations
Petition of Verizon New England, Inc. for Adoption of Competitive License
Regulation, CATV 06-1

Dear Sir or Madam:

Enclosed for filing, please find the comments of Shrewsbury Electric and Cable Operations ("SELCO") in the above docket. A hardcopy of the comments also is being sent by regular mail.

Please acknowledge receipt via email reply or by date stamping the enclosed copy of this cover letter and returning it in the self-addressed, stamped envelope.

Thank you for your attention to this matter.

Sincerely,

Karla Doukas

Enclosures

cc: Thomas Josie, General Manager, Shrewsbury Electric and Cable Operations

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

CABLE TELEVISION DIVISION

Petition of Verizon New England for
Adoption of Competitive License Regulation

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Docket No. CATV-06-1

**COMMENTS OF
SHREWSBURY ELECTRIC AND CABLE OPERATIONS**

Pursuant to the Notice of Public Hearing and Request for Public Comment issued by the Department of Telecommunications and Energy's Cable Division ("Department") on May 5, 2006, Shrewsbury Electric and Cable Operations ("SELCO") hereby files its comments concerning Verizon New England's ("Verizon") proposal for the adoption of competitive license regulations. For the reasons set forth below, SELCO opposes Verizon's petition.

The implementation of Verizon's proposed regulations would divest local authorities of much of their authority to regulate the public ways as well as significantly impair their ability to perform their licensing functions and protect their communities. Indeed, many aspects of Verizon's proposal are beyond the scope of the Department's authority. Under the current cable licensing scheme in Massachusetts, local authorities are vested with the power to negotiate and grant licenses for the construction and operation of community antenna television ("CATV") systems within their communities. G.L. c. 166A, § 6 gives local issuing authorities the ability to grant or reject a license application after holding a public hearing so long as the decision is supported by a written statement of reasons.

Contrary to G.L. c. 166A, § 6, proposed regulation 207 CMR 3.04.5(3) would virtually eliminate all discretion of local issuing authorities to deny competitive licenses by mandating

approval of applications and the issuance of a final license upon substantial compliance with the requirements of G.L. c. 166A, §§ 3, 4, and 5. Specifically, Verizon's proposed regulation states in pertinent part:

(3) An application under this section shall be approved and a final license issued to construct and operate a cable system shall be granted by the issuing authority following substantial compliance with each of the following requirements:

- a. the submission requirements contained in the applicable form prescribed by the Commission, pursuant to M.G.L. c. 166A § 4; and
- b. the requirements of M.G.L. c. 164A, §§ 3, 4 and 5.

(Emphasis added.) However, the statutory provisions identified in proposed 207 CMR 3.04.5(3) do not encompass all of the issues and terms associated with cable licensing. G.L. c. 166A, §§ 3 and 4 merely require applicants to include certain information on their licensing applications. These sections do not establish any criteria or standards for approval or denial. Similarly, G.L. c. 166A, § 5 merely establishes some conditions that applicants must agree to “in the event a license is issued.” This list is not exhaustive.

In addition to these minimum statutory requirements, cable licenses contain specific terms and conditions regulating installation and construction within the public ways. They also often contain Public, Educational and Government (“PEG”) programming and level playing field provisions as well as other terms and conditions which are not specified by the Department's forms or the statute. Proposed regulation 207 CMR 3.04.5(3), together with the proposed accelerated timelines would impair, if not effectively eliminate, the ability of local licensing authorities to negotiate such terms if a license must be granted simply upon compliance with submission requirements and the conditions specified in G.L. c. 166A, § 5. Without the ability to negotiate such terms, Verizon's proposal would create an unlevel playing field by placing incumbent cables providers at an unfair disadvantage, given their significant investments in the licensing process and the municipalities that they serve.

Moreover, practical reasons may necessitate the denial of subsequent competitive licenses, such as the availability of capacity for the infrastructure in the public ways. Under Verizon's proposal, a municipality would be compelled to grant competitive cable licenses to every entity that furnishes the requisite information and agrees to the conditions in G.L. c. 166A, § 5. Thus, towns could be faced with endless construction activities and having to accommodate multiple overhead pole systems or underground conduits, which "incommode the public ways." See G.L. c. 166, § 21.

It seems clear that the proposed regulation conflicts with the language and spirit of G.L. c. 166A. Similarly, Verizon's proposed de novo review of licensing decisions also appears to exceed the Department's review authority, as well as unnecessary given the limited authority conferred to local issuing authorities under Verizon's proposed regulatory scheme. Accordingly, Verizon's competitive licensing requirements and procedures cannot be implemented through the regulatory process. It is well settled that the Department cannot implement regulations which exceed its statutory authority. See Massachusetts Elec. Co. v. Dept. of Pub. Utils., 419 Mass. 239 (1994).

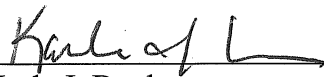
Finally, Verizon's proposed licensing reform is not needed to further competition in the cable industry. As RCN points out in its comments, it is debatable whether the local franchise process stands as the primary barrier to video competition. Nonetheless, there is a bill pending in Congress (HR 5252) to establish a national licensing process, which would allow existing cable providers to bypass state and local franchising. While SELCO vehemently opposes this pending legislation, unlike Verizon's proposal, however, the House Bill at least provides for PEG access and contains rights-of-way provisions. Also, the passage of HR 5252 would obviate the need for Verizon's proposed competitive licensing process in Massachusetts. Accordingly, Verizon's

proposal should be viewed as nothing more than attempt to give itself an unfair competitive advantage as it becomes ready to provide cable services in Massachusetts.

Respectfully submitted,

SHREWSBURY ELECTRIC
AND CABLE OPERATIONS,

By its attorneys,



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Dated: July 12, 2006